

Fed. Mine Safety and Health Review Commission

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not affect discovery in adversary proceedings before the Commission. Discovery is governed by the Commission's Rules of Procedure in 29 CFR part 2700.

[72 FR 71790, Dec. 19, 2007]

§ 2702.2 Location of offices.

The Commission maintains its Headquarters office at 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001. It has two offices for Administrative Law Judges, one at 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001, and the other at 1244 Speer Boulevard, Suite 280, Denver, Colorado 80204-3582.

[67 FR 60862, Sept. 27, 2002]

§ 2702.3 Requests for information.

(a) *Content of request.* All requests for information should be in writing and should be mailed or delivered to Chief FOIA Officer, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001-2021. See FOIA Guide for more information on the submission of requests, including requests submitted electronically or by facsimile. The words "Freedom of Information Act Request" should be printed on the face of the envelope. Requests for information shall describe the particular record requested to the fullest extent possible and specify the preferred form or format (including electronic formats) of the response. The Commission shall accommodate requesters as to form or format if the record is readily reproducible in the requested form or format. When requesters do not specify the preferred form or format of the response, the Commission shall respond in the form or format in which the record is most accessible to the Commission.

(b) *Response to request.* The Chief FOIA Officer will determine whether to comply with the request. Except in unusual circumstances, as described in paragraph (c) of this section, the determination will be made within 20 working days of receipt. Appeals of adverse decisions may be made, in writing, to the Chairman of the Commission, at the same address, within 20 working days of the decision. The sitting Com-

missioners, by majority vote, will decide appeals within 20 working days after receipt. In the event of a tie vote of those Commissioners, the Chief FOIA Officer's initial determination will be deemed approved by the Commission. Records to be disclosed shall be provided with the initial letter setting forth the determination as to the request or shall be sent as soon as possible thereafter.

(c) *Processing of request.* (1) In unusual circumstances as described in this paragraph, when additional time is needed to respond to the initial request, the Commission shall acknowledge the request in writing within the 20-day period, describe the circumstances requiring the delay, and indicate the anticipated date for a substantive response that may not exceed 10 additional working days, except as provided in paragraph (d) of this section. With respect to a request for which a written notice has extended the time limit by 10 additional working days, and the Commission determines that it cannot make a response determination within that additional 10 working day period, the requester will be notified and provided an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange an alternative time frame for processing the request or a modified request. Refusal by the requester to reasonably modify the request or arrange for an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of paragraph (d) of this section. For purposes of this paragraph, "unusual circumstances" that may justify a delay are:

(i) The need to search for and collect the requested records from other facilities that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are requested in a single request;

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a

substantial interest in the determination of the request, or among two or more components of the agency having substantial subject matter interest in the request; or

(iv) The need to consult with the submitter of requested information.

(2) Whenever it reasonably appears that certain requests by the same requester, or a group of requesters acting in concert, actually constitute a single request that would otherwise satisfy the unusual circumstances specified in this paragraph, and the requests involve clearly related matters, such requests may be aggregated for purposes of this paragraph. Multiple requests involving unrelated matters will not be aggregated.

(d) *Additional time to respond to request.* In the event that the Commission is unable to comply with the time limits for responding to a request specified in paragraphs (a) and (c) of this section, it may request additional time to complete its review of the records, and request a court to retain jurisdiction and allow it such additional time to complete its review, if it can show that exceptional circumstances exist and that it is exercising due diligence in responding to the request. For purposes of this paragraph, “exceptional circumstances” do not include a delay that results from a predictable workload of requests, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests. Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing the request (or a modified request) under paragraph (c) of this section shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this paragraph.

(e) *Expedited processing of request.* (1) A person requesting records from the Commission pursuant to this section may request expedited processing of his request in cases in which he can demonstrate a compelling need for the records requested. For purposes of this paragraph a compelling need means:

(i) That a failure to obtain the requested records on an expedited basis could reasonably be expected to pose

an imminent threat to the life or physical safety of an individual; or

(ii) The information is urgently needed by a person primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.

(2) A demonstration of compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of his knowledge and belief. Notice of the determination whether to grant expedited processing in response to a requester’s claim of compelling need shall be provided to the person making the request within 10 calendar days after receipt of the request. The Commission will provide expeditious consideration of administrative appeals of determinations whether to provide expedited processing. Once a determination has been made to grant expedited processing, the Commission will process the request as soon as practicable.

(f) *Denial of request.* In denying a request for records, in whole or in part, the Commission shall state the reason for the denial; set forth the name and title or position of the person responsible for the denial of the request; make a reasonable effort to estimate the volume of the records denied; and provide this estimate to the person making the request, unless providing such an estimate would harm an interest protected by the exemption pursuant to which the request is denied. If an appeal is denied, the Commission’s notice of denial shall inform the requester of the right to obtain judicial review of the Commission’s action under 5 U.S.C. 552(a)(4)(B)–(G).

(g) *Partial response to request.* Any reasonably segregable portion of a record shall be provided to the person requesting it after the deletion of any exempt portions of the record. The amount of information deleted shall be indicated on the released portion of the record, at the place in the record the deletion is made if technically feasible,

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unless indicating the extent of the deletion would harm an interest protected by the exemption pursuant to which the deletion is made.

[62 FR 55335, Oct. 24, 1997, as amended at 67 FR 60863, Sept. 30, 2002; 72 FR 71790, Dec. 19, 2007]

§ 2702.4 Materials available.

(a) *FOIA Reading Room.* Materials which may be made publicly available for inspection and copying at the Commission's on-site FOIA Reading Room, 601 New Jersey Ave., NW., Suite 9500, Washington, DC, include, but are not limited to:

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the agency and are not published in the FEDERAL REGISTER;

(3) Administrative staff manuals and instructions to staff that affect a member of the public;

(4) Copies of all records, regardless of form or format, which have been released to any person under this subpart and which, because of the nature of their subject matter, the Commission has determined have become or are likely to become the subject of subsequent requests for substantially the same records; and

(5) A general index of records referred to under this paragraph (a).

(b) *E-FOIA Reading Room.* Materials created on or after November 1, 1996, under paragraphs (a)(1) through (5) of this section may also be accessed electronically through the Commission's Web site at <http://www.fmshrc.gov>.

[72 FR 71790, Dec. 19, 2007]

§ 2702.5 Fees applicable—categories of requesters.

(a) When documents are requested for commercial use, requesters will be assessed the full direct costs of searching for, reviewing for release, and duplicating the records sought.

(b) When records are being requested by educational or noncommercial scientific institutions whose purpose is scholarly or scientific research, and not for commercial use, the requester

will be assessed only for the cost of duplicating the records sought, but no charge will be made for the first 100 paper pages reproduced.

(c) When records are being requested by representatives of the news media, the requester will be assessed only for the cost of duplicating the records sought, but no charge will be made for the first 100 paper pages reproduced.

(d) For any other request not described in paragraphs (a) through (c) of this section, the requester will be assessed the full direct costs of searching for and duplicating the records sought, except that the first two hours of manual search time and the first 100 paper pages of reproduction shall be furnished without charge.

(e) For purposes of paragraphs (b) through (d) of this section, whenever it reasonably appears that a requester, or a group of requesters acting in concert, is attempting to break down a single request into a series of requests relating to the same subject matter for the purpose of evading the assessment of fees, such requests will be aggregated and fees assessed accordingly.

[54 FR 3022, Jan. 23, 1989, as amended at 62 FR 55336, Oct. 24, 1997]

§ 2702.6 Fee schedule.

(a) *Search fee.* The fee for searching for information and records shall be the salary rate (that is, basic pay plus 16%) of the employee making the search. This hourly rate is listed on the Commission's Web site at <http://www.fmshrc.gov>. Fees for searches of computerized records shall be the actual cost to the Commission, but shall not exceed \$300 per hour. This fee includes machine time and that of the operator and clerical personnel. If search charges are likely to exceed \$50, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Fees may be charged even if the documents are not located or if they are located but withheld on the basis of an exemption.

(b) *Review fee.* The review fee shall be charged for the Chief FOIA Officer's initial examination of documents located in response to a request in order to determine if they may be withheld